



BORREGO WATER DISTRICT

OVERVIEW OF PROPOSED STIPULATED JUDGMENT – NOVEMBER 20, 2019

STIPULATED JUDGMENT COMPARED WITH GSP

Purpose. The Stipulated Judgment defines Basin water rights for each pumper producing two acre feet or more in the Basin and imposes a “physical solution” regarding Basin management including use of Basin storage space, overseen by the Superior Court. The Stipulated Judgment thus offers a permanent, durable solution to Basin water management issues. By contrast, a GSP cannot interfere with water rights. Thus, any GSP “allocation” of water or other actions taken by the GSA could be subject to legal challenge or be undone by the filing of a contested water rights adjudication at any time.

SGMA Alternative. SGMA allows a stipulated judgment to serve as an “alternative” to a GSP.

DWR Role. As with a GSP, DWR will review the proposed stipulated judgment, including the groundwater management plan, for compliance with SGMA. Any DWR recommended corrective actions to the proposed stipulated judgment will be submitted to the Court and the parties for review and approval.

PHYSICAL SOLUTION / GROUNDWATER MANAGEMENT PLAN

GMP. With minor modifications to conform its terms to the Stipulated Judgment, the draft final GSP will serve as the groundwater management plan (GMP) for the Basin. The “Physical Solution” consists of the GMP, the Stipulated Judgment, the associated court documents, and adaptive management of the Basin over time, as overseen by the Court.

BASELINE PRODUCTION ALLOWANCES / ANNUAL ALLOCATION

BPA. BPA’s will be established for each pumper consistent with BPA’s calculated by the County as part of GSP development. In addition, existing water credit holders will receive BPA based upon prior purchasing/fallowing of agricultural property.

Annual Allocation. Each year, a pumper will be allowed to pump up to its “Annual Allocation”. The Annual Allocation is calculated as a percentage of the Party’s BPA, ramped down over time to equal the Basin’s Sustainable Yield. (See below for further details.)

BWD Water Rights. BWD’s BPA will be 2,222 acre feet per year (AFY) plus 359 AFY in water credits for a total of 2,581 AFY.

BWD’s current pumping demands for existing customers are approximately 1,600 AFY.

New development will need to supply its own water supply, consistent with the BWD Developer's Policy.

ABDSP. The State Park will receive a fixed, non-reducible pumping allocation of 20 AFY to support its continued needs.

Carry-Over. Pumpers, including BWD, will be allowed to "carry over" water if they underpump in any given year, so long as they timely pay Watermaster assessments. In addition, a party's carry-over "account" can never exceed two times its BPA. Any carryover must be the first water used in the following Water Year.

RAMPDOWN

Start Date. All Basin pumpers will begin rampdown on October 1, 2020.

Accelerated Rampdown. Rampdown will be 5% per year from BPA for each pumper for the first 5 years. Rampdown will equal the midpoint toward the sustainable yield pumping by the end of the first 10 years.

This rampdown rate is faster than proposed under the GSP.

This level of rampdown will materially reduce pumping levels in the Basin year over year for the first 10-years of rampdown.

Sustainable Yield by 2040. Further rampdowns will occur from 2030 to 2040 to reach sustainable yield pumping by 2040.

Adaptive Management. The 5,700 AFY target sustainable yield will be subject to review by the Technical Advisory Committee and Watermaster (see below) and could be modified (up or down) based upon new/better data and best available science including model runs generated using the Borrego Valley Hydrologic Model.

Soft Landing. Pumpers will be permitted to pump up to 120% of their Annual Allocation in Years 1 to 3, to allow for a "soft landing" provided that they underpump or purchase/lease water in Years 4 to 5 to make up for their overpumping in the first 3 years.

Overproduction Penalties. All overpumping will be subject to an administrative penalty of at least \$500 per acre foot, as set by the Watermaster.

WATER TRANSFERS / FALLOWING

Transfer Rules. Water transfers within the Basin will be allowed, subject to the following rules:

All transfer participants must be parties to the Judgment.

Except for BWD, the County and original BPA owners, all buyers of BPA will be subject to an anti-speculation provision requiring ownership of one acre of land in the Basin for each 5 acre feet of BPA. This provision is intended to discourage speculation and hoarding of water rights.

Water rights restrictive covenants will be recorded against parcels from which BPA is transferred to legally restrict further pumping.

Permanent water transfers will be subject to Watermaster review to ensure compliance with the above conditions.

Fallowing Standards. Permanent water rights transfers will require that minimum fallowing standards be satisfied on the fallowed property, namely:

All agricultural tree crops must be destroyed.

All such lands will be stabilized through mulching, planting cover crops and/or other dust abatement measures.

All irrigation wells that will no longer be used are to be properly abandoned or converted to monitoring wells.

Above ground irrigation lines must be permanently removed.

All hazardous materials must be removed.

Fallowing Costs. Where practicable, fallowing will be undertaken before the permanent transfer is accomplished. If fallowing cannot be accomplished in advance, the Watermaster will obtain security or escrow funds will be held equal to 120% of the estimated cost of the fallowing to ensure fallowing occurs within 12 months of the transaction.

WELL METERING / TESTING

Meter Due Date. All non de-minimis wells will be metered by March 31, 2020.

Telemetry. Meters with telemetry equipment will be used to allow Watermaster direct access to pumping information.

Water Quality Monitoring. The water quality monitoring program that the BWD and County were conducting through March 2019 as part of GSP development will continue unless and until the program is modified by the Watermaster with Technical Advisory Committee input.

GOVERNANCE / COURT'S ROLE / WATERMASTER

Court Oversight. The Court will oversee administration of the final, approved Judgment.

Continuing Jurisdiction. The Court will have "continuing jurisdiction" over the Judgment. All disputes that cannot be resolved locally or through mediation are to be submitted to the Court for resolution on an expedited schedule. Consistent with other adjudications, it is anticipated that the same Judge will oversee the case until he/she retires and passes the case to the next Judge. Thus, the Judge(s) will become over time very familiar with the Basin, the parties, etc.

Watermaster. The Court will establish a Watermaster and a Watermaster Board of Directors to oversee implementation of the Physical Solution and the Judgment. The Watermaster acts as an “arm of the Court”.

Watermaster Board. The Watermaster Board will be comprised of five members:

BWD representative

County representative (invited)

Farm Bureau (Agricultural) representative

Recreational representative

Community representative

Community Representative. The Community Representative will be appointed through the following process:

The GSP Advisory Committee members as of June 1, 2019 (comprised of representatives of the BWD ratepayers, Borrego Springs Community Sponsor Group, the Anza-Borrego Desert State Park, and the Borrego Valley Stewardship Council) will nominate three candidates.

The Borrego Springs Unified School District will nominate one candidate.

The other Watermaster Board members will select one of the four nominees to serve as the Community Representative on the Watermaster Board of Directors.

Watermaster Board Voting. Majority rules for most votes. Certain matters related to budgeting and financial issues will require a 4/5th majority vote of the Watermaster Board, subject to Court oversight if such issues cannot be resolved locally.

Watermaster Staff. The Watermaster will hire its own professional staff, likely to be a part-time Executive Director/Technical Consultant and a consulting attorney.

Watermaster Costs. Watermaster overhead and other costs will be borne by pumpers in proportion to their BPA’s. This means that BWD will be responsible for about 10% of the cost of the Watermaster, though this percentage will increase over time. This figure compares with the much larger financial responsibility and potential liability to be shouldered by BWD ratepayers if BWD served as the GSA for the Basin.

TAC. The Watermaster will have a Technical Advisory Committee comprised of professional hydrogeologists, engineers, etc. Any party to the Judgment may appoint a qualified representative to the TAC, at that party’s sole cost. The TAC will be charged with making recommendations to the Watermaster Board regarding technical issues. TAC meetings will be open to the public, as described in the Judgment.

EWG. The Judgment also establishes an Environmental Working Group to advise the Watermaster on Groundwater Dependent Ecosystems (GDE) and related issues.

REIMBURSEMENT FOR BWD GSP PREPARATION COSTS

BWD will be reimbursed for its GSP preparation expenses in the amount of \$340,000 payable through proportional pumping assessments over a 3-year period.

INTERIM BASIN MANAGEMENT

Interim Watermaster. Until the Court formally establishes the permanent Watermaster and Watermaster Board when final Judgment issues, the Basin will be operated by an interim Watermaster Board established in the same manner as described above.

Interim Relief. During the pendency of the Court case, the stipulating parties and interim Watermaster Board intend to seek preliminary injunctive relief to ensure the terms of the Stipulated Judgment are followed by all pumpers before final Judgment issues.

GSA. The interim Watermaster assumes all responsibility for the sustainable management of the Basin and other duties of the Watermaster. The BWD GSA will remain in abeyance until final Judgment issues, at which time the GSA will be dissolved.

LEGAL PROCESS.

Comprehensive Adjudication. Because the Stipulated Judgment is considered a “comprehensive adjudication” which defines all Basin water rights (a form of real property), all landowners in the Basin are legally required to be served with the water rights lawsuit. Court procedures are streamlined for landowners who do not wish to fully participate in the lawsuit.

De Minimis Pumpers. It is anticipated that those who do not pump water or who are de-minimis pumpers (i.e., those who pump less than two acre feet per year for domestic use) will not need to substantially participate in the court case as it proceeds, unless they so desire.

C. Timing. The court case is anticipated to take 18 to 36 months to complete, depending upon the length of DWR’s review of the Stipulated Judgment and whether any non-stipulating pumpers object.

D. Judgment. To approve the Stipulated Judgment, the Court must find that it (1) is consistent with California Constitutional principles regarding reasonable and beneficial use of water resources; (2) is consistent with the water rights priorities of all non-stipulating parties; and (3) treats all objecting parties equitably as compared to stipulating parties. It is expected the Court will be able to make these findings.